IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR.

O R D E R

1. Commercial Taxes Officer, Anti Evasion, Circle-II, Jaipur
Vs.
M/s.M.R.F. Limited, Jaipur
(S.B. Sales Tax Revision Petition No.166/2005)

2. Commercial Taxes Officer, Anti Evasion, Circle-II, Jaipur
Vs.
M/s.M.R.F. Limited, Jaipur
(S.B. Sales Tax Revision Petition No.167/2005)

Date of Order : April 30, 2007.

P R E S E N T

HON'BLE DR.JUSTICE VINEET KOTHARI

Mr. R.B. Mathur for the Revenue.
Mr. Alok Sharma)
Mr. R.C. Shah) for the respondent.
Mr. Rajeev Surana)

BY THE COURT:

REPORTABLE

1. The question that arises for consideration by this Court in the present revision petitions filed by the Revenue is as to whether vulcanizing solution used by the respondent assessee in tyre retreading work is a synthetic adhesive taxable at the rate of 16% or at general rate of 10% which was charged and paid by the respondent assessee.

2. The Assessing Authority imposed difference tax of 6% on the sale value of such vulcanizing solution holding the same to be taxable at the rate of 16% purportedly under Entry No.91 of the notification, S.No.713, S.O. No.399 dated 27.3.1995 which Entry reads as under:-

> "91. Paints, Pigments, Enamels, cement based water coloures, Dry distempers, Oil-based distempers, Emulsion paints including acrylic and plastic emulsion paints, Lacquers including Cellulose Lacquers, Varnishes, ***all types of synthetic adhesives,*** all types of polish (other than boot- polish), Turpentine oil, white oil, Double boiled linseed oil, Thinners, all kinds of paint removers and all kinds of wall papers." 16%

3. The Deputy Commissioner (Appeals), however, allowed the appeal of the assessee and held that the vulcanizing solution is a rubber compound and is not a synthetic adhesive, therefore, 10% sales tax charged under the general residuary Entry No.100 of the Notification dated 27.3.1995 by the respondent assessee was appropriate and since the Tax Board in another case had already held it to be so taxable at general rate of 10%, the appeal of the assessee was allowed by the learned Deputy Commissioner (Appeals). The Revenue took the matter further before the Tax Board but lost there also and the Tax Board affirmed the rate of 10% on the said commodity following its judgment in appeal by one M/s.Vikrant Tyres

Ltd. and the Tax Board also relied upon a ruling given by the Commissioner of Sales Tax, Maharashtra State, Bombay in exercise of its powers for determination of disputed questions where the learned Commissioner held that the kwik solution was a rubber vulcanizing cement which is required for chemical bounding of the patches of tyres and tubes. Being aggrieved by the said order of the Tax Board, the Revenue has come up in the present revision petitions for two different periods before this Court.

4. Mr. R.B. Mathur, learned standing counsel for Revenue urged that undoubtedly the vulcanizing solution was used by the respondent assessee for sticking together of two sheets of rubber for retreading of tyres and the compound of the vulcanizing solution comprised of natural rubber, polymer, rubber compound and solvent and, therefore, it was nothing but synthetic adhesive used for sticking together of sheets of rubber and was, therefore, taxable at the rate of 16%. He, therefore, assailed the orders passed by the two Appellate Authorities below and submitted that the revision petitions deserve to be allowed and the order of the Assessing Authority deserved to be restored. He submitted that it is well settled that common parlance test is the acid test for interpreting the taxability of a particular commodity and how a particular commodity is understood in the trade parlance by the persons concerned with that particular trade or

business is the relevant factor. Relying on certain judgments of the Apex Court for this well settled proposition of law of applying the common parlance test, he urged for allowing the revision petitions.

5. Mr. Alok Sharma and Mr. R.C. Shah on the side opposite submitted in the first instance that the relevant Entry No.91 quoted above made it more than clear that even assuming for a moment that the vulcanizing solution was a synthetic adhesive, though they reserved their right to argue otherwise, did not include the vulcanizing solution used for retreading of tyres in the said entry and applying the rule of interpretation of ejusdem generis the vulcanizing solution used for retreading of tyres could not be taxed on 16% under the aforesaid Entry No.91 of the notification dated 27.3.1995 because the said entry would include only those types of synthetic adhesive which are used in paints industry. Mr. Alok Sharma relied upon the settled rule of interpretation of Ejusdem generis by reading para 12 of **M/s. Siddeshwari Cotton Mills (P) Ltd. Vs. Union of India & another** [(1989) 2 SCC 458] which is quoted below for ready reference:-

> "12. The expression ejusdem generis – 'of the same kind or nature' – signifies a principle of construction whereby words in a statute ***which are otherwise wide but are associated in***

> ***the text with more limited words*** are, by implication, given a restricted operation and are limited to matters of the same class or genus as preceding them. If a list or string or family of genus-describing terms are followed by wider or residuary or sweeping-up words, then the verbal context and the linguistic implications of the preceding words limit the scope of such words."

6. He further relied upon the judgment of Hon'ble Supreme Court in **Pardeep Aggarbatti Vs. State of Punjab and others** [(1997)107) STC 561] in which the view of Bombay High Court in **Commissioner of Sales Tax Vs. Gordhandas Tokersey** [(1983) 52 STC 381 (Bom.)] was approved. The Bombay High Court noted that it was a well-known rule of construction that words in such entries had to be construed with reference to the words found in immediate connection with them. When two or more words which were capable of being understood in an analogous manner were coupled together, they had to be understood in the common analogous sense and not in the general sense. Applying this rule of *noscitur a sociis*, the word "perfumes" in the entry was to be understood in conjunction with "cosmetics" and "depilatories". In other words, the word "perfumes" referred only to such preparations as were commonly known in the market for use on the human body as perfumes. Approving the said Bombay view, the Hon'ble Supreme Court held that "we are in no doubt whatever that the word "perfumery" in the said

Entry No.16 draws colour from the words “cosmetics” and “toilet goods” therein and that, so read, the word “perfumery” in the said Entry No.16 can only refer to such articles of perfumery as are used, as cosmetics and toilet goods are, upon the person. The word “perfumery” in the context in which it is used has, therefore, no application to “dhoop” and “agarbatti.”

7. Therefore, the learned counsel submitted that since admittedly the vulcanizing solution was neither sold to paints industry in question nor they were being used in any manufacturing activity relating to paints nor in common parlance the said commodity was known in the trade as one relating to paints industry, therefore, there was no question of imposing 16% rate of tax on the said commodity with reference the aforesaid Entry No.91. They further submitted that there was no separate entry prescribing the rate of 16% for the said vulcanizing solution or all types of synthetic adhesives and, therefore, the assessee was justified in charging only the general rate of 10% under residuary entry, since no other specific entry was available for applying 16% rate of tax. Mr. R.B. Mathur, learned counsel for Revenue also could not point out any other specific entry providing for 16% rate of tax for all types of synthetic adhesives.

8. Having heard the learned counsels and after going through the relevant case laws cited at the bar, this Court is of the opinion that there is no force in these

revision petitions filed by the Revenue. The commodity in question vulcanizing solution is an adhesive is beyond the pale of doubt because it is used for sticking together two layers of rubbers in the tyre retreading industry of the respondent assessee. The chemical composition of the vulcanizing solution also indicates that they have the adhesive value in them. The rubber compound, polymers and solvent used along with natural rubber to make the vulcanizing solution makes it a synthetic adhesive used for the purpose of sticking. But the question remains as to whether the same could be taxed at the rate of 16% with reference to aforesaid Entry No.91 under the notification dated 27.3.1995. A bare and close reading of the said Entry No.91 clarifies the issue that it is only the synthetic adhesive used by the paints industry which are intended to be taxed at the rate of 16%. The principles of ***ejusdem generis*** or ***noscitur a sociis*** are well settled principles of interpretation and the words of general and wider import used in an entry surrounded by other relevant terms has to draw its colour and meaning from such surrounding words and that cannot be lost sight of. Though this Entry No.91 as such was not referred by any of the authorities below and discussed in detail as to whether the same would apply to the commodity in question or not but this being the only relevant entry regarding synthetic adhesives providing for 16% rate of tax and this being

the only core question of law arising out of the order of the Tax Board and there being no other competing entry prescribing 16% rate of tax exercised on synthetic adhesive, this question can very well be decided in the present revision petitions and this Court is of the opinion that there is no need to remand the case back to the Appellate Courts below for this purpose. Thus, going by the aforesaid rule of interpretation, this Court is of the opinion that the learned Assessing Authority was not correct in applying 16% rate of tax on the commodity in question i.e. the vulcanizing solution with reference to Entry No.91 of notification dated 27.3.1995 and the Appellate Authorities were justified in setting aside such additional tax, interest and penalty thereon though for different reasons.

9. Accordingly, these revision petitions are dismissed and it is held that vulcanizing solution was rightly taxable at general rate of 10% under Entry No.100 and not at the rate of 16% under Entry No.91 under the aforesaid notification dated 27.3.1995 during the relevant period. The revision petitions are accordingly dismissed with no order as to costs.

(Dr.VINEET KOTHARI),J.

VS/